

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

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| THURMAN MEARIN, NATHAN RILEY, |) | |
| Plaintiffs, |) | |
| |) | |
| vs. |) | Civil Action No. 11-669 |
| |) | Judge Nora Barry Fischer/ |
| CARLA SWARTZ, Unit manager, MAJOR L. |) | Magistrate Judge Maureen P. Kelly |
| WINFIELD, Major of Unit Management, |) | |
| LOUIS FOLINO, Superintendent, DORINA |) | |
| VARNER, Chief Grievance Officer, L-5 UNIT |) | |
| MANAGER PAULA PALYA, Unit Manager, |) | Re: ECF No. 59 |
| LIEUTENANT ROBERT KENNEDY, RHU/ |) | |
| Capital Case Lieutenant; sued in defendants |) | |
| individual and official capacities, |) | |
| Defendants. |) | |

O R D E R

AND NOW, this 12th day of June, 2013, after Plaintiffs Thurman Mearin and Nathan Riley filed an action in the above-captioned case, and after a Motion to Dismiss Plaintiff's Amended Complaint was submitted on behalf of Defendants, and after a Report and Recommendation was filed by the United States Magistrate Judge and the parties were granted until June 7, 2013, to file written objections thereto, and upon consideration of the objections filed by Plaintiffs, and upon independent review of the record, and upon consideration of the Magistrate Judge's Report and Recommendation, which is adopted as the opinion of this Court,

IT IS HEREBY ORDERED that Defendants' Motion to Dismiss Plaintiffs' Amended Complaint, ECF No. 59, is granted in part and denied in part as follows: the Motion is granted as to Plaintiff Mearin's Eighth Amendment claims revolving around his exposure to ETS brought against Defendants Winfield, Folino, Tomson, Williams, Meighen, Greenwall, Renera, Fearia and Varner; as to Plaintiff Riley's Eight Amendment ETS claims brought against

Defendants Folino and Palya; as to both Plaintiffs' Eighth Amendment claims revolving around an alleged "snitch policy" brought against all Defendants; and as to both Plaintiffs' First Amendment claims brought against all Defendants; the Motion is denied as to Plaintiff Mearin's Eighth Amendment ETS claims brought against Defendants Swartz and Palya and as to Plaintiff Riley's Eighth Amendment ETS claims brought against Defendants Swartz, Kennedy and Over.

BY THE COURT:

/s/ Nora Barry Fischer
Nora Barry Fischer
United States District Judge

cc: Honorable Maureen P. Kelly
United States Magistrate Judge

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